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EXAMINER

SHELEHEDA, JAMES R

ART UNIT

PAPER NUMBER

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |  |  |
|------------------------------|--------------------------------------|--|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>09/753,768 | <b>Applicant(s)</b><br>REDMOND, SCOTT D. |  |
|                              | <b>Examiner</b><br>JAMES SHELEHEDA   | <b>Art Unit</b><br>2424                  |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 April 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 20-39 and 41-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20-39 and 41-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 04/23/10 has been entered.

### ***Response to Arguments***

2. Applicant's arguments filed 04/23/10 have been fully considered but they are not persuasive.

a. On page 7, applicant makes no arguments towards the rejections of claims 35 and 37, under 35 U.S.C. 112, but merely points to previous arguments mailed 06/12/08. It is noted, however, that the response mailed 06/12/08 also did not include any arguments regarding the current rejections. That response merely amended the claim language to remove the word "intermediate" in attempting to overcome a different rejection. It is unclear how that is relevant to the current rejections.

b. On page 8, of applicant's response, applicant makes no specific arguments against the prior art references and merely points to arguments previously mailed on 06/12/08 concerning Whiteside.

In response, it is noted that Whiteside specifically discloses wherein the billboard may continuously broadcast a vendor phone number and other information (column 2, lines 9-26).

As the billboard is ***continuously broadcasting*** the data, the phone receiver will detect that the signal when it is within range (column 2, lines 1-20). Thus, the system of Whiteside clearly discloses a "proximity sensor" that is capable of detecting other devices, as the system detects a billboard within range which is broadcasting a wireless signal. The phone must detect the billboard and receive/transmit signals with it when it comes within range. Therefore, applicant's arguments are still not convincing.

Applicant further argues that in Whiteside, the user performs the "scanning and detecting" process. In response it is unclear as to how applicant finds this possible, as it is the cell phone which must establish communications wireless communications with the billboard (column 1, lines 41-48 and column 1, line 67-column 2, line 4). The cell phone must scan and detect any wireless signals being communicated to establish communication with the transmitting billboard (see Fig. 1; column 1, line 67-column 2, line 20). While the user may activate the phone, the subsequent steps of detecting a nearby wireless device and then communicating with it are basic functions of the phone, and not the user.

Applicant's arguments are still not convincing, as the very nature of wireless electronic communications requires the device itself to detect and receive the nearby wireless signals.

c. In response to applicant's comments on pages 8-9, regarding various dependent claims, all of the cited portions now indicate which the proper prior art reference. Further, although applicant has not presented any actual arguments, the examiner has attempted to "clarify" the rejections and cited prior art references.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 35 and 37 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 35 recites "wherein the audio/video content is received over the wireless network from the content server via one or more remote wireless devices", which is not supported in the specification as originally filed. While the device may receive

audio/video through a subscribed wireless information service with a video server (page 4, lines 18-23 and page 5, lines 14-28) which may be provided by a remote wireless device (page 10, lines 5-11), there is no support for receiving the audio/video content from more than one remote wireless device.

Claim 37 recites “the first remote wireless device having received the audio/video content from a second remote wireless device”, which is not supported in the specification as originally filed. While the device may receive audio/video through a subscribed wireless information service (page 4, lines 18-23 and page 5, lines 14-28) and may communicate with a remote wireless device (page 10, lines 5-11), there is no support for the remote wireless device to receive audio/video selections from a second remote wireless device as recited in the claim.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 20-39 and 41-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tran (6,202,060) (of record) in view of Whiteside (5,835,861) (of record).

As to claim 20, Tran discloses a portable wireless media access device (10, Fig. 1; column 4, lines 66-67 and column 5, lines 1-4), comprising:

a transceiver (wireless transceiver, 31) configured to transact a wireless communications session (connected to complete a particular request; column 18, lines 53-65) over a wireless network (column 7, lines 40-52 and column 18, lines 53-65);

memory (Fig. 1; RAM, 22) configured to store audio/video content (column 18, lines 27-31 and column 19, lines 34-50); and

a user interface (keypad, 24) configured to receive instructions (column 18, lines 27-31, column 19, lines 34-50 and column 7, lines 28-52) related to audio/video content stored in the memory (transmitted media to the TV for playback; column 14, lines 41-50).

While Tran discloses a remote wireless device capable of wireless communication with the portable wireless media access device, the wireless communication occurring over the wireless network (column 6, line 38-column 7, line 27), he fails to specifically disclose a proximity sensor coupled to the transceiver configured to scan for and detect a remote wireless device capable of transacting a wireless communication session with the portable wireless media access device.

In an analogous art, Whiteside discloses a portable wireless device (Fig. 1; cell phone, 10) which uses a transmitter and receiver (column 1, lines 59-64) to scan and detect a portable wireless media access device capable of wireless communication with the portable wireless device (transmitter/receiver; column 1, line 58-column 2, line 18) to receive content (vendor telephone number; column 2, lines 13-22) for the typical benefit

of providing a convenient way for a wireless user to easily acquire a vendor telephone number from a passing billboard (column 1, lines 14-24).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Tran's system to include a proximity sensor configured to scan for and detect a remote wireless device capable of wireless communication with the portable wireless media access device, as taught by Whiteside, for the typical benefit for allowing a user of a portable wireless device to easily acquire advertiser information from billboards.

As to claim 21, Tran and Whiteside disclose wherein the audio/video content is received over the wireless network (see Tran at column 18, lines 27-31, column 19, lines 34-50 and column 7, line 28-52).

As to claim 22, Tran and Whiteside disclose wherein the audio/video content is streamed over the wireless network (real-time audio/video stream presented as it is received; see Tran at column 7, line 3-27).

As to claim 23, Tran and Whiteside disclose wherein the audio/video content is pulsed over the wireless network (digital transmission as digital signal pulses; see Tran at column 7, line 3-27).



As to claim 24, Tran and Whiteside disclose wherein the memory includes a removable memory card (see Tran at Fig. 1; PCMCIA expandable storage).

As to claim 25, Tran and Whiteside disclose wherein the proximity sensor automatically detects the remote wireless device (see Whiteside at column 1, line 59-column 2, line 45).

As to claim 26, Tran and Whiteside disclose wherein the proximity sensor is further configured to connect to the remote wireless device in response to an instruction receive via the user interface, the user interface being further configured to receive instructions related to an interaction with the remote wireless device (see Whiteside at column 1, line 58-column 2, line 18).

As to claim 27, Tran and Whiteside disclose wherein the transceiver is further configured to initiate the wireless communications session with the remote wireless device detected by the proximity sensor, the wireless communication occurring over the wireless network (see Whiteside at column 1, line 58-column 2, line 18).

As to claim 30, Tran and Whiteside disclose wherein the remote wireless device is a media display device configured to exchange interactive content with the portable media access device (billboard; see Whiteside at Fig. 1).

As to claim 31, Tran and Whiteside disclose wherein the media display device is a billboard (billboard; see Whiteside at Fig. 1).

As to claims 28, 29 and 32, while Tran and Whiteside disclose communicating with a remote wireless device, they fail to specifically disclose wherein the device is a cellular phone, a similarly equipped portable wireless media access device or kiosk.

The examiner takes Official Notice that it was notoriously well known in the art at the time of invention by applicant to communicate with a kiosk, cellular phone or a similarly equipped portable wireless media access device for transmitting/receiving data, which are both readily available and distributed, for the typical benefit of taking advantage of widely-distributed existing devices for providing communication.

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Tran and Whiteside's system to include wherein the device is a cellular phone, similarly equipped portable wireless media access device or kiosk for the typical benefit of taking advantage of widely-distributed existing devices for providing communication.

As to claim 33, Tran and Whiteside disclose wherein the audio/video content is received over the wireless network from a content server (Internet server; see Tran at column 19, lines 23-50).

As to claim 34, Tran and Whiteside disclose wherein the transceiver is further configured to establish a local area network comprising one or more remote wireless devices detected by the proximity sensor (see Whiteside at column 1, line 58-column 2, line 39).

As to claim 35, Tran and Whiteside disclose wherein the audio/video content is received over the wireless network from a content server via an intermediate remote wireless device that is communicatively connected to the local area network (see Tran at column 6, line 26-column 7, line 52 and column 19, line 23-column 20, line 21).

As to claim 36, Tran and Whiteside disclose wherein the wireless communication session includes communication with a video server (see Tran at column 19, lines 34-50 and Whiteside at column 1, line 59-column 2, line 39).

As to claim 37, Tran and Whiteside disclose wherein the audio/video content is received over the wireless network from an intermediate remote wireless device that is communicatively connected to the local area network, the intermediate remote wireless device having received the audio/video content from another remote wireless device that is communicatively connected to the localized area network (see Tran at column 6, line 26-column 7, line 52 and column 19, line 23-column 20, line 21).

As to claim 38, Tran and Whiteside disclose wherein the audio/video content is received as one or more segments (packetized data; see Tran at column 6, line 26-column 7, line 27).

As to claim 39, Tran and Whiteside disclose wherein a first segment of the audio/video content is received from a first source and a second segment of the audio/video content is received from a second source (see Tran at column 6, line 38-column 7, line 27).

As to claim 41, while Tran and Whiteside disclose a remote wireless device detected by the proximity sensor, they fail to specifically disclose wherein the device is identified by a serial number corresponding to that particular remote wireless device.

The examiner takes Official Notice that it was notoriously well known in the art at the time of invention by applicant to utilize unique serial numbers to identify particular devices, so as to provide security by identifying valid or "safe" devices and for allowing systems to readily identify a device and its corresponding use, thereby taking advantage of a well-known method for uniquely identifying electronic devices.

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Tran and Whiteside's system to include wherein the device is identified by a serial number corresponding to that particular remote wireless device for the typical benefit of taking advantage of a well-known method for uniquely identifying electronic devices.

As to claim 42, Tran and Whiteside disclose a serial port for exchanging information with an external device via a serial cable (see Tran at column 12, lines 7-36).

As to claim 43, Tran and Whiteside disclose a docking port for exchanging information with an external device via a docking station (proprietary docking port; see Tran at column 12, lines 7-36).

As to claim 44, Tran and Whiteside disclose at least one audio/video port for providing audio/video content to an external playback device, wherein playback is controlled by the user interface of the portable wireless media access device (see Tran at Fig. 3; column 14, line 41-column 15, line 10 and column 16, line 50-column 17, line 25).

As to claim 45, Tran and Whiteside disclose a digital camera configured to record video content for transmission via the wireless network (see Tran at column 6, line 38-column 7, line 27).

7. Claim 46 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tran and Whiteside as applied to claim 20 above, and further in view of Sizer, II et al. (Sizer) (6,021,432) (of record).

As to claim 46, while Tran and Whiteside disclose at least one audio/video selection received over the wireless network, they fail to specifically disclose wherein the receipt of the audio/video includes receipt of data transmitted over a radio sideband carrier frequency.

In an analogous art, Sizer discloses a portable device (104; column 5, lines 4-16) which will receive data transmitted over a radio sideband carrier frequency accompanying transmitted audio/video data (column 2, line 60-column 3, line 3) for the typical benefit of providing users with additional forms of relevant data along with broadcast transmissions (column 2, line 60-column 3, line 3 and column 4, lines 3-28).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Tran and Whiteside system to include wherein the receipt of the audio/video includes receipt of data transmitted over a radio sideband carrier frequency, as taught by Sizer, for the typical benefit of providing users with additional forms of relevant data along with broadcast transmissions.

### ***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES SHELEHEDA whose telephone number is (571)272-7357. The examiner can normally be reached on Monday - Friday, 9:00AM - 5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on (571) 272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/James Sheleheda/  
Primary Examiner, Art Unit 2424

JS